



Center for Business
and Human Rights



Break Out Session 3: Social Risks in Complex and Conflict Environments in the Extractive Sector

A variety of efforts and initiatives, some involving the U.S. government directly, exist to help extractive companies assess and address human rights risks in complex environments. These include Voluntary Principles on Security and Human Rights, the Kimberley Process for conflict diamonds, the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas, Sections 1502 and 1504 of the Dodd-Frank Act, and a variety of other tools and initiatives. What impact have these efforts had? What lessons have been learned from these efforts? What challenges remain? What additional actions or activities should the U.S. government and other stakeholders consider taking to improve human rights and good governance for extractive companies working in complex environments?

Facilitators: Chris Albin-Lackey (Human Rights Watch), Eileen Kane (USG), Jason Pilemmer (USG)

Participants: Mahima Achuthan (Associate at Radin Law Offices), Robert Boneberg (Free the Slaves), Karen Beadle (ConocoPhillips), Joshua Cooper (Hawaii Institute for Human Rights), Adele Faure (Convington and Burling), Suzan Flamm (Jewelers Vigilance Committee), Cecilia Gardner (Jewelers Vigilance Committee, World Diamond), Gabriela Herzog (Hess Corporation), Annabel Hogg (RFK Compass), Paloma Munoz-Quick (Inter-American Commission on Human Rights), Kathy Mulvey (EIRIS Conflict Risk Network)

Rapporteur: Noemí Jimenez

Overview: This session discussed the extractive sector and how it was affected by Dodd-Frank and Reform Acts, the role of U.S. and Chinese companies and governments in Africa, minimum human rights standards for extractive companies, and the role of U.S. government in this sector and how these issues should be covered in the NAP.

Dodd-Frank

Several participants noted that some companies are avoiding entering new African markets because they find the costs of addressing the human rights challenges effectively outweigh the benefits. Others noted that there were unintended consequences resulting from the Dodd-Frank Act, for example that it was enacted without taking into account the resources it would take to comply in a meaningful way. Some companies operating in the extractive sector were ill-prepared to produce mandated reports and needed to divert added resources to do so felt blindsided and some found it difficult to determine where in their companies to house responsibilities for this work.

Despite these and other challenges, participants acknowledged that the Dodd- Frank Act did give companies a better understanding of their global supply chains and encouraged them to become more proactive in preparing for future challenges. Several participants noted that the Dodd-Frank Act has been a catalyst for greater engagement, encouraging beneficial partnerships among different stakeholders.

Some participants urged that in the future when legislation of this type is contemplated industry input should be sought early on, in part so that companies understand the implications for them and have time to prepare for its enactment and implementation. One participant proposed that in addressing issues like these a combination of mandatory and voluntary standards would be optimal.

China

One participant urged the need for the U.S. government to focus greater attention on Africa, noting the great attention that Chinese energy companies are paying to that region. One person estimated that Chinese companies have tripled their investments in extractive operations in Africa over the last four years. They highlighted the concern that the U.S. government needs to devote more time and attention to ensuring that American companies are in a competitive position to get this business. Several participants urged that the US National Action Plan needs to be implementable, efficient, understandable and affordable. Another participant encouraged the USG to highlight best practice examples to help others in the industry understand the types of actions they can and should be taking in assessing the history of those with whom they are doing business.

Minimum Standards (Carrots vs. Sticks)

Some participants said that minimum standards are not effective if not enforced and that the NAP must press companies to live up to the minimum industry standards. Other participants urged the need for greater incentives for companies to meet these minimum standards and to receive positive acknowledgement when they do so, rather than punishing those who do not comply. Other participants said that companies should be required publish public reports outlining their efforts to meet industry standards, including their due diligence measures, as part of a commitment to increase transparency.

Other participants reiterated the view that the USG should foster an environment where companies share best practices/failures in a way that encourages companies to strive to be industry leaders. Some participants proposed that the USG should provide information in places where U.S. companies are having trouble doing business.

Issues Specific to the Sector

Some participants noted that the location of natural resources is unalterable and therefore companies cannot choose where to operate and, once there, it is very difficult for companies to leave. Among the greatest risks companies face are: corrupt governments, rights violating military forces, police and private security who fail to protect citizens, and difficulties in community/company relationships.